DOCUMENT RESUME

ED 202 306 HE 013 814

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TITLE	[State Oversight in Postsecondary Education and the Office of Education's Eligibility Process. Collected Remarks.]
INSTITUTION	Education Commission of the States, Denver, Colo. Inservice Education Program.; State Higher Education Executive Officers Association.
SPONS AGENCY	Kellogg Foundation, Battle Creek, Mich.
REPORT NO	IEP-910-2; IEP-910-6
PUB DATE	Oct 78
NOTE	7p.; Papers presented at Seminars for State Leaders in Postsecondary Education.
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Accountability; Certification; *Consumer Protection; *Eligibility; Evaluation Criteria; Federal Government; *Government School Relationship; *Higher Education; Institutional Evaluation; Legal Responsibility; Standards; State Government; State Legislation; *State Licensing Boards
IDENTIFIERS	American Institutes for Research; General Accounting Office; Office of Education; *Seminars for State Leaders Postsec Ed (ECS SHEEO)

ABSTRACT

Perspectives on an American Institutes for Research (AIR) study of state oversight in postsecondary education, conducted for the U.S. Office of Education (USOE), are offered by researcher Steven M. Jung. In addition, a list of recommendations by the General Accounting Office concerning USOE's eligibility process and responses by John Proffitt, on behalf of USOE and the Department of Health, Education, and Welfare are presented. The historical antecedents of the AIR study are reviewed. Several policy discussions at the federal level revealed the lack of knowledge about the effectiveness of state licensing in providing consumer protection. The study was based on a detailed analysis of about 95 percent of the total number of state laws and regulations passed before January 1, 1977, that dealt with institutional licensing and approval. Detailed tables were developed that indicate the consumer protection provisions of state laws and regulations in 14 categories. Additionally, state comparisons were included on such topics as: location of licensing function with the state bureaucracy, authorized enforcement strategies, and treatment of out-of-state institutions. It was found that only 38 states have legal provisions for authorization and oversight of private degree-granting institutions, and, of these, three-quarters contain provisions that make most established institutions exempt from the consumer protection standards of the laws and regulations. Suggested roles for the government and licensing agencies are described. Recommendations by the General Accounting Office and the federal responses pertain to: the respective roles of the federal and state governments and accrediting associations; dissemination of revised criteria for eligibility; evaluation processes; actions against schools that are guilty of educational malpractice; and guidelines for establishing minimum standards for such matters as advertising, refund policies, and information disclosure. (SW)

ED202306

Inservice Education Program (IEP)

Paper Presented at a Seminar for State Leaders in Postsecondary Education

(STATE OVERSIGHT IN POSTSECONDARY EDUCATION AND THE OFFICE OF EDUCATION'S ELIGIBILITY PROCESS. COLLECTED REMARKS)

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HE013814

IEP-910-2

IEP Reprint No. 910-6

Education Commission of the States

Inservice Education Program (IEP)
Education Commission of the States
1860 Lincoln Street, Suite 300
Denver, Colorado 80295

SHEEO

The IEP Program has been supported primarily by the W. K. Kellogg Foundation with additional funds from the Education Commission of the States, the Frost Foundation and the State Higher Education Executive Officers

A REVIEW OF THE STUDY OF STATE OVERSIGHT IN POSTSECONDARY EDUCATION *

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Two years ago, I stood before many of you at the Keystone, Colorado, conference for state licensing and approval officials, when John Proffitt and Bill Green of the U.S. Office of Education (USOE) announced that the American Institutes for Research (AIR) staff had been awarded a contract to perform a study of the status of state authorization and oversight of postsecondary schools. The reception was uniformly chilly and about evenly divided between those who felt that they already knew everything worth knowing about state oversight and those who felt that state oversight was none of USOE's business in any case. Fortunately, this initial reception soon gave way to one of sincere interest and cooperation as it became more and more apparent that state oversight constituted the first and too often the only defense for students who were the recipients of federal assistance against educational malpractice.

In providing a brief overview of the study and its products, it would be remiss of me not to note the immediate historical antecedents of our work, including the 1973 ECS model state legislation and two national conferences sponsored by ECS in 1974 on the topic of student consumer protection. These conferences first pointed out the importance of state licensing for the so-called "tripartite" system of institutional eligibility for federal student assistance programs. The antecedents also include the 1974 USOE-sponsored study by Harold Orlans and his collaborators** that strongly brought into question the federal government's *de facto* policy of relying on private accreditation bodies to prevent student consumer abuse. They include the 1975 Airlie House conference, which brought to national attention the growing area of state licensing for private degree-granting institutions. Until then, it had been generally perceived that the licensing function was more appropriate for vocationally oriented schools, i.e., proprietary schools. Finally, the antecedents of this study include the 1975 USOE conference on institutional eligibility, at which the detrimental effects of the dearth of knowledge about state licensing were noted with increasing concern.

During the initial stages of our study, the lack of knowledge about the effectiveness of state licensing in providing consumer protection was strongly reflected in several policy discussions at the federal level: (1) the 1976-1977 Federal Trade Commission staff investigations of abuses in the proprietary school field; (2) the 1977 Department of Health, Education and Welfare (DHEW) student financial assistance study group hearings and report on reorganization of federal assistance programs under Title IV; and (3) the 1976-1977 Government Accounting Office (GAO) study of the federal eligibility systems, all of which gave state licensing the shortest possible shrift.

This brings me to the completion of our study, which might better be titled "everything you always wanted to know about state licensing but were afraid to ask". The study is based on a detailed analysis of about 95 percent of the total number of state laws and regulations passed before January 1, 1977, that dealt with institutional licensing and approval. In connection with this analysis, over 900 pages of common format abstracts were prepared. These are currently being made available through the ERIC system. In addition, the study is based on over 150 hours of telephone interviews with officials in all 50 states and the District of Columbia, and in-depth site interviews with over 100 officials in 20 states. These interviews gave us extensive data on the enforcement resources and needs of 184 state agencies — 82 exercising authority over private institutions and 102 with some form of governance responsibility for publicly supported institutions. We were able to collect and record over 200 critical incidents where state licensing/regulating agencies had been conspicuously successful or unsuccessful in dealing with institutional policies, practices or conditions that were considered potentially abusive to students. These

* See Appendix A for the *Executive Summary* of the AIR study.

** See footnote, page 7.

data are reported in the *Final Technical Report*. Included in the appendixes of the report are detailed tables that indicate the consumer protection provisions of state laws and regulations in the 14 following categories that were identified by a previous AIR study:

1. Institutional purpose, governance and operation.
2. Course length, content, goals or objectives.
3. Degree, diploma, credential or graduation requirements.
4. Qualifications of instructional or administrative staff, including maximum teaching loads and teacher-pupil ratios.
5. Facilities, including instructional and administrative facilities and equipment, housing or room/board facilities, health and safety requirements.
6. Financial stability, including institutional performance bonds and financial record maintenance.
7. Minimum qualifications of potential students and orientation of entering students.
8. Public disclosure of material facts, including fees and content of enrollment agreements or contracts.
9. Advertising or sales/recruiting practices, including minimum qualifications for licensing of sales representatives, and limitations on use of terminology such as "university," "approval," "admissions counselor," etc.
10. Student and personnel recordkeeping practices, including minimum requirements for content of students' records.
11. Student and personnel recordkeeping practices, including minimum requirements for maintenance of students' records.
12. Financial practices, including procedures for making loan awards, requirements for fees and scholarships or aid requirements.
13. Minimum refund policies and practices.
14. Placement, including follow-up data collection from former students, graduates and employers regarding posteducation outcomes.

Also included are comparative state-by-state analyses on such topics as: (1) location of the licensing function within the state bureaucracy, (2) authorized enforcement strategies, (3) dates of recent rulemaking activity, (4) treatment of out-of-state institutions and (5) comparisons with the similar provisions of the 1973 ECS model state legislation. Finally, extensive data are provided on state officials' perceptions of their own needs for strengthening the oversight of institutions under their jurisdiction. Obviously, these results are much too extensive for me to report here. I urge you to read the *Executive Summary* (see Appendix A) to get a basic overview and then use the table of contents in the *Final Report* to examine the results on topics about which you are particularly interested.

However, some major findings of the study bear repeating. For example, only 38 states have legal provisions for authorization and oversight of private degree-granting institutions, and, of these, fully three-quarters contain provisions that make most established institutions exempt from the consumer protection standards of the laws and regulations. This is true despite the well-documented and well-publicized DHEW projections that nonpublic traditional degree-granting institutions are facing "ominous" prospects in the immediate future, with declining enrollments, declining financial stability and increasing competition with public-supported institutions and nontraditional institutions offering degree programs costing considerably less money to operate. In the nonpublic occupational school sector, 48 states have licensing provisions. Here I have previously characterized the common situation as one of not enough staff or money, not enough legal expertise, not enough support from state law enforcement agencies and not enough visibility for the important job being done. Yet these agencies represent virtually the only real authority in some states for forcing unethical, unscrupulous or incompetent schools from the educational marketplace — a multibillion dollar marketplace in which existing state consumer fraud or UDAP* statutes are rarely if ever applied. Governor Bowen listed a number of things that need to be done to rectify this situation. But progress will not be easy.

Recently, someone quoted a state legislator who, while helping to vote down a proposed state licensing bill for degree-granting institutions, said, "Hell, no one ever died from a poor education and, besides, licensing costs money!" Given the political climate in most states, that legislator's position is an entirely rational one and probably more reflective of the future than any of us care to admit. The trend, as I see it, is away from more public support for state regulatory intervention in the name of consumer protection, away from the provision of more public funds for any purposes of intervention in the free marketplace and away from serious concern for the individual student who, through

* Unfair or deceptive acts or practices

ignorance, is subjected to educational malpractice.

Given that situation, of what good is this study that we have worked two years to complete? I hope you will come up with some answers to this question during this unique workshop. But I would like to offer some personal suggestions.

First, of course, there are a number of ways the federal government could help, including those that have been listed in the *Final Report* and in the *Executive Summary*, such as the establishment of a USOE state liaison center and clearinghouse, the provision of technical assistance, the provision of grants for specific developmental purposes and the funding of workshops such as this one. At the state level, it may be possible to influence legislators to add more effective provisions or substitute conditional exemptions for blanket exemptions by pointing out some of the provisions other states have enacted. We have attempted to facilitate this use by preparing two additional documents — a set of consumer protection principles for state regulations promulgated under the ECS model legislation and actual listings of the segments of various state laws and regulations that were rated as more extensive than the provisions of the model legislation.

The importance of good public relations cannot be underestimated. It is clear that effective oversight of schools will never make headline news. Paradoxically, it seems that only abuses make news. However, incidents that have occurred elsewhere (i.e., in other states) have been used effectively in some states to show "what *could* happen here." The following represent some other specific suggestions for licensing agencies:

1. Prepare routine annual reports to the legislature and to the general public detailing the number and topics of student complaints received, the nature of abuses discovered by routine authorization oversight visits, the consequent agency actions and the outcomes, especially in terms of potential abuses prevented. In this connection, the development of a standard complaint handling mechanism, to record, categorize and follow up on student complaints, is essential.

2. Issue special reports and press releases, detailing especially noteworthy abuses or actions taken against institutions, including detailed explanations of the practices or conditions that were uncovered and the corrective steps that were taken.

3. Arrange publication and wide distribution within the state of pamphlets and/or handbooks that tell students and parents about how to shop for an education, be more effective consumers and complain effectively if they encounter abuses. Publish a standard student complaint form with instructions on where to send it.

4. Participate, with state vocational guidance organizations, in comprehensive programs to make potential students in the state more aware of available options and their rights and responsibilities in choosing an education. One example is providing a statewide hotline number or a computerized information sharing and retrieval system with connections to all high schools in the state.

Above all, agencies should seek to point out the cost benefits to the state of maintaining a careful limited program of institutional monitoring and follow up. Every student who successfully completes a sound educational program is more likely to become a taxpayer, rather than a tax user. Moreover, many state institutional licensing programs take advantage of licensing fees and subsidies provided by the Veterans Administration for performing course approvals for veterans to provide the bulk of their financial support.

This conference marks the end of my own involvement in the area of state oversight and student consumer protection. I will be moving on to an assignment in a completely different area of educational research. A lack of permanent attachment to a sponsor can provide a necessary measure of objectivity to a contracted study such as this. Unfortunately, it is also a drawback because it means we can rarely be around to see if there will be any follow up to our recommendations. It is somewhat unusual and very gratifying to me to have this much contact with the actual follow up by a research sponsor. It is my hope that in a few years we might again have an opportunity to conduct a study of the status of state oversight in postsecondary education, finding substantial improvements that can be traced to the data and recommendations of this study. In retrospect, it has been a great pleasure.

REVIEW OF THE RECOMMENDATIONS OF THE GENERAL ACCOUNTING OFFICE IN ITS DRAFT REPORT, "THE OFFICE OF EDUCATION'S ELIGIBILITY PROCESS—WHAT ASSURANCES DOES IT PROVIDE?" AND THE RESPONSE OF THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

John Proffitt
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Seven major recommendations contained in the General Accounting Office's (GAO) draft report on "The Office of Education's Eligibility Process—What Assurances Does it Provide?" were reviewed by Mr. Proffitt. For each recommendation, Mr. Proffitt defined the response of the U.S. Department of Health, Education and Welfare (DHEW) and the U.S. Office of Education (USOE), which response is as yet not published. The recommendations and the DHEW/USOE response are summarized below.

Recommendation 1. We recommend that the Secretary of Health, Education and Welfare direct the Commissioner of Education to continue to meet with representatives of the states and accrediting associations to jointly (a) develop definitions of their respective roles and (b) establish a reasonable time frame for defining and implementing these roles.

Response: We concur. The Commissioner of Education and the USOE staff will continue to meet with state and accrediting bodies and will organize national and regional conferences to discuss the GAO recommendations.

Recommendation 2. We recommend that the Secretary of DHEW direct the Commissioner of Education to initiate efforts that will increase the public awareness of the accreditation process and what can and should be expected from it.

Response: DHEW and USOE concur. The Office of Education is prepared to issue an eligibility statement and will then organize nationwide public hearings on the revised criteria.

Recommendation 3. The Secretary of DHEW should direct the Commissioner of Education, in order to systematically evaluate association petitions, to (a) establish minimum submission requirements, (b) identify sample self studies and visiting team reports to be submitted, (c) conduct observer visits to the school, (d) obtain information from appropriate groups regarding schools accredited by the petitioning association, and (e) determine if association performance is of sufficient scope to meet its standards.

Response: We concur with the direction of this recommendation but not with three of the specific recommendations. USOE agrees with parts (a) and (c), but does not concur with part (b), with part (d) (because we believe current procedures are adequate), nor do we concur with part (e).

Recommendation 4. We recommend that the Secretary of DHEW direct the Commissioner of Education to forthrightly implement the provisions of the 1976 Education Amendments. Specifically, this should include the use of the limit, suspend and termination actions against schools which misrepresent the nature of their educational programs, nature of their charges or employability of graduates.

Response: DHEW and USOE concur. The final rules have already been published in the *Federal Register*.

Recommendation 5. We recommend that the Secretary of DHEW direct the Commissioner of Education to issue regulations for schools applying for eligibility for USOE financial assistance programs that provide for the following:

a. Admission policies that enroll students with potential to benefit from training; with exceptions to be justified in writing;

b. For universities, colleges, schools or programs preparing students for gainful employment, the provision to students of information on the number of students completing the program and seeking employment, or license or other document legally required to obtain employment in the recognized occupation;

c. Fair and equitable refund policies under which a school must refund unearned tui-

tion and fees and room and board charges to students who do not begin or complete the period of study for which funds were paid.

Response: We concur basically with all three parts of this recommendation. With respect to part (a), current regulations would require schools to document the basis for admission, and to part (b), regulations already call for publication of such information.

Recommendation 6. We recommend that the Secretary of DHEW direct the Commissioner of Education to:

a. Develop the capability to provide technical assistance and leadership to states to upgrade their authorization and monitoring process including initial authorization and monitoring capabilities;

b. Propose legislation to the Congress that would provide adequate financial support to the states to improve the state authorization process:

c. Encourage states to adopt strong authorization mechanisms including the elimination of exemptions for accredited schools from state review;

d. Develop minimum standards for such matters as advertising, refund policies, and information disclosure for states to use as a guide.

Response: With regard to part (a) of this recommendation we concur and the staff will be developing this further. However, we do not agree with part (b) and urge the adoption of the Education Commission of the States' model legislation. We concur with part (c) and believe that this already exists in the ECS model legislation, but we will continue to study the issue. We will reserve comment on part (d) as this recommendation has created the most discussion within DHEW, particularly with respect to the refund policy. The department is considering extending the refund policy to all student aid programs of DHEW.

Recommendation 7. We recommend that the Secretary of DHEW direct the Commissioner of Education to conduct a study of what information should be shared by the parties in the eligibility process and establish a formal information sharing system among those parties.

Response: DHEW and USOE concurs with this recommendation.